

HONORABLE JAMAL N. WHITEHEAD

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WILD FISH CONSERVANCY,

Plaintiff,

v.

SUSEWIND, *et al.*,

Defendants.

Case No. 2:21-cv-00169-JNW

STIPULATED MOTION TO MODIFY
CONSENT DECREE AND ORDER

NOTED: June 18, 2024

STIPULATED MOTION

Plaintiff Wild Fish Conservancy and Defendants Kelly Suswind, in his official capacity as Director of the Washington Department of Fish and Wildlife, *et al.*, (collectively “the Parties”) hereby jointly file this Stipulated Motion to Modify Consent Decree. The Parties request entry of an order modifying the consent decree as sought herein. In support of the motion, the Parties state as follows:

1. The Parties are working cooperatively to comply with Paragraph II.C.1 of the Consent Decree, Dkt. No. 81; and

2. The Parties agree that the proposed modifications will aid the Parties in accomplishing their goals with the snorkel surveys in Paragraph II.C.1.

Accordingly, the Parties hereby request the following revisions to Paragraph II.C.1 of the Consent Decree, Dkt. No. 81:

1 **1. Snorkel Surveys.** In the course of meeting
 2 obligations under Term and Condition 1a of the ESA Section 7(a)(2)
 3 Biological Opinion and Magnuson-Stevens Fishery Conservation
 4 and Management Act Essential Fish Habitat Consultation, the
 5 WDFW Officials shall, in cooperation and coordination with the
 6 Conservancy, conduct ~~systemie~~ snorkel surveys on the North Fork
 7 Skykomish River and the South Fork of the Tolt River. The Parties
 8 shall conduct multiple such surveys each year, as conditions allow.
 9 ~~Such surveys shall cover the entire anadromous zone of the North~~
 10 ~~Fork of the Skykomish River and the South Fork of the Tolt River~~
 11 in an effort to enumerate summer steelhead. For such surveys, the
 12 Parties shall use protocols implemented in the Parties' 2021 report
 13 of summer steelhead snorkel surveys on the North Fork Skykomish
 14 and the North and South Fork Tolt rivers (dated January 14, 2022),
 15 or protocols otherwise mutually agreed to by the Parties. The
 16 Conservancy's participation in this program shall be maintained for
 17 four years starting in summer 2024. WDFW Officials shall fund the
 18 Conservancy's participation in all such surveys. The Parties expect
 19 that the Conservancy's costs will be similar to those the
 20 Conservancy incurred for surveys the Conservancy has participated
 21 in pursuant to the consent decree entered on May 2, 2019, in *Wild*
 22 *Fish Conservancy v. WDFW, et al.*, No 2:19-cv-00612-JLR (W.D.
 23 Wash.), which were approximately \$30,000 annually, and adjusted
 24 for inflation will be approximately \$38,000 to \$44,000 annually.

25 **LCR 7(e) Certification:** I certify that this memorandum contains 359 words, in
 26 compliance with the Local Civil Rules.

27 RESPECTFULLY SUBMITTED this 18th day of June 2024.

28 KAMPMEIER & KNUTSEN, PLLC

29 ROBERT W. FERGUSON
 Attorney General

By: s/ Emma A. O. Bruden
 Emma A. O. Bruden, WSBA No. 56280
 Brian A. Knutsen, WSBA No. 38806
 1300 S.E. Stark Street, Suite 202
 Portland, Oregon 97214
 Telephone: (503) 841-6515 (Knutsen)
 (503) 719-5641 (Bruden)
 Email: brian@kampmeierknutsen.com
 emma@kampmeierknutsen.com

By: s/ Koalani Kaulukukui
 Koalani Kaulukukui, WSBA #50642
 Edward Callow, WSBA #30484
 Public Lands and Conservation Division
 1125 Washington Street SE
 P.O. Box 40100
 Olympia, WA 98504-0100
 360-664-8977 (Kaulukukui)
 360-664-2854 (Callow)
 Koalani.Kaulukukui@atg.wa.gov
 Ted.Callow@atg.wa.gov

Attorneys for Plaintiff Wild Fish Conservancy

Attorneys for Defendants

ORDER

Pursuant to the above Stipulation of the Parties, Paragraph II.C.1 of the Consent Decree, Dkt. No. 81, is hereby modified to read as follows:

1. Snorkel Surveys. In the course of meeting obligations under Term and Condition 1a of the ESA Section 7(a)(2) Biological Opinion and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Consultation, the WDFW Officials shall, in cooperation and coordination with the Conservancy, conduct snorkel surveys on the North Fork Skykomish River and the South Fork of the Tolt River. The Parties shall conduct multiple such surveys each year, as conditions allow, in an effort to enumerate summer steelhead. For such surveys, the Parties shall use protocols implemented in the Parties' 2021 report of summer steelhead snorkel surveys on the North Fork Skykomish and the North and South Fork Tolt rivers (dated January 14, 2022), or protocols otherwise mutually agreed to by the Parties. The Conservancy's participation in this program shall be maintained for four years starting in summer 2024. WDFW Officials shall fund the Conservancy's participation in all such surveys. The Parties expect that the Conservancy's costs will be similar to those the Conservancy incurred for surveys the Conservancy has participated in pursuant to the consent decree entered on May 2, 2019, in *Wild Fish Conservancy v. WDFW, et al.*, No 2:19-cv-00612-JLR (W.D. Wash.), which were approximately \$30,000 annually, and adjusted for inflation will be approximately \$38,000 to \$44,000 annually.

There are no other modifications to the Consent Decree.

IT IS SO ORDERED.

ENTERED and DATED this 7th day of August 2024.



Jamal N. Whitehead
United States District Judge